

REMARKS

This is responsive to the Office Action mailed on June 6, 2005. In the Office Action, claims 1-13 were rejected. With this amendment, claims 1, 6, 10 and 13 are hereby amended and claims 2-4 have been cancelled. The application continues to include claims 1, 5-10, 12 and 13.

The Office Action rejected claim 2 under 35 U.S.C. § 112, second paragraph as being indefinite since the phrase “at least one side strap” did not correspond to the number of side straps previously set forth in claim 1 which were left and right side straps. Claim 2 has been cancelled. It is believed that the rejection is now moot.

Next, the Office Action rejected claims 1, 2 and 5-11 under 35 U.S.C. § 103(a) as being unpatentable over the Alves U.S. Patent No. 5,769,295 in view of Tompkins U.S. Patent No. 2,691,399. The Office Action asserted that Alves teaches a backpack comprising a bag portion and only one shoulder strap. It also alleges that Tompkins teaches a similar device for carrying arrows on a user’s back that comprises only one shoulder strap, and left and right side straps, and central member.

Claim 1 has been amended to state that the side straps are each connected to the central member at second opposite ends from the first ends through a buckle that separates into first and second portions such that either or both side straps are attachable and detachable to the central member.

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references must teach or suggest all the claim limitations. A teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant’s disclosure.

The initial burden is on the Examiner to provide some suggestion of the desirability of doing what the inventor has done. This the Office Action has not done.

The Office Action states that it would have been obvious to one of ordinary skill in the art to provide the backpack of Alves with left and right side straps, modify the shoulder strap with a separating buckle and provide a central member to provide lateral stability to the bag portion of the backpack via the side straps and to allow for quick attaching and detaching of the backpack. It is not understood how all of these modifications to the structure shown in Alves could have been obvious to one of ordinary skill in the art without using the present application as a guide. The Examiner must provide some suggestion of the desirability of doing what the inventor has done. MPEP § 2142. There is absolutely no suggestion nor motivation in Alves to provide left and right side straps. The Alves backpack holder includes one shoulder strap which has a buckle portion that may be insertable into either one of two mating buckle portions that are attached to a bottom portion of the bag. It is not understood how there can be any suggestion or motivation for a side strap to the structure of Alves. One would have to change the basic purpose of the Alves invention. It is also not seen how there is any motivation for a central member to which the side straps are then detachably attached.

The same holds true for the Tompkins patent. The Tompkins patent describes a quiver for arrows. There is no teaching or suggestion of making the quiver structure of Tompkins into a backpack.

Furthermore, independent claim 1 has been amended to more specifically state how the side straps are attached to the central member, that is through buckles that separate into first and second portions so that either one or both side straps may be disengaged.

In view of this, it is believed that the Office Action does not meet its burden of establishing a prima facie case of obviousness.

Similarly, independent claims 6 and 10 which define methods for donning or removing a backpack are neither taught nor suggested by the prior art made of record.

The method for donning the Alves backpack neither teaches nor suggests the step of connecting or disconnecting side straps. There are no side straps in Alves nor is there any suggestion of having a side strap. The Tompkins patent describes a quiver construction. There is no disclosure regarding a method of donning the quiver construction.

The Office Action appears to summarily dismiss the patentability of claims 6-11 by stating that "Tompkins provides separate buckle (60) to allow for disconnecting one side strap. and that one of ordinary skill in the art would then recognize that by disconnecting the side strap, this allows for easy removal of the quiver from a user's back." However, the Office Action fails to identify in Tompkins, Alves or Haber the method used for removing the backpack (claim 10), and the method for wearing the backpack (as defined in amended independent claim 6). The Office Action does not address the specific steps in each of these claims, none of which are disclosed in any of the references cited in the Office Action.

As stated in the MPEP, in establishing a prima facie case of obviousness, to establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. MPEP § 2143.03. There is no documentary evidence of the procedure being claimed in method claims 6-10, 12 and 13. Furthermore, all of the claim limitations in claims 6-10, 12 and 13 must be taken into account to establish a prima facie case of obviousness. Neither the Tompkins patent, the Haber patent or the Alves patent describes a method of donning removing a backpack by disconnecting a side strap through the separation of a buckle into first and second portions. Although the Alves patent shows such a buckle, the connection of the buckle is between the shoulder strap and a strap positioned at the bottom of the backpack. The shoulder strap is not connected through a connector disposed proximate the person's chest area or side straps disposed proximate the wear's mid-section which at one point are both connected to the shoulder strap. In the Alves patent, the shoulder strap is connected to only one of the bottom straps, and cannot be connected to both of the bottom straps. Therefore, the method as defined in claims 6-10, 12 and 13 with all of the limitations described in these claims, is not made obvious by any of the combinations of the prior art described in the Office Action.


In view of the above, it is respectfully requested that the rejection of claim 6-11, 12 and 13 be withdrawn and the claims reconsidered and allowed.

It is believed that all of the claims, as amended, are now in condition for allowance, and reconsideration and allowance of all of the claims are respectfully requested.

The Director is authorized to charge any fee deficiency required by this paper or credit any overpayment to Deposit Account No. 23-1123.

Respectfully submitted,

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